

REMARKS

Claim 19 has been amended to independent form on the basis of the subject matter of original claims 1, 5 and 6. The remaining dependent claims 2-4, 8-13 and 26 have been amended to depend on the independent claim 19, instead of the original dependency on claim 1.

Claims 1, 5-7, 14-18 and 22-25 have been canceled, without prejudice.

Claim 20 has been rewritten in independent form on the basis of the subject matter of original claims 1, 5, 6 and 22.

Claims 2, 8, 9, 11, 20, 23 and 26 have been further amended to specify the preferred ranges and parameters originally claimed.

Regarding claims 11 and 12, the changes suggested in the Office Action as to what should be in parenthesis has been made.

Care has been taken not to introduce any new matter.

Double Patenting

Claims 1-5, 7, 10-18 and 20-22 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application No. 10/535,489 and over claims 1-9 and 11-14 of copending Application No. 10/535,484.

Claims 1-5, 7, 10-13, 16, 17, 20 and 22 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 and 10-12 of co-pending Application No. 10/587,730.

Applicants respectfully submit that the double patenting rejection has been rendered moot the claim amendments. For example, claim 1 has been canceled and the subject matter of claim 6 which has not been objected to for double patenting has been incorporated in the currently amended independent claims 19 and 20; claims 18 and 22 have been canceled.

35 U.S.C. § 112

Regarding claims 1, 2, 11, 17, 20, 23 and 26, the phrase "preferably" renders the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Regarding claims 1, 11, 12 and 23, the use of the parenthesis to further define H3 and H2U renders the claims indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. Examiner suggests stating the definition as part of the claim and placing the abbreviations H3 and H2U in parenthesis. Applicants have made the suggested changes.

Claim 1 has been canceled. Claims 2, 8, 9, 11, 17, 20 and 26 have been amended to specify the preferred ranges and parameters originally claimed.

Applicants respectfully submit that the rejection has been rendered moot the claim cancellations and amendments which take into account the Office Action suggestions.

35 U.S.C. § 102

Claims 1-5, 7, 10-17 were rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cain, et al., US 5,718,938. According to the Office Action, in regard to claims 1, 5, 7, 10-15 and 17, Cain discloses a bakery fat composition and food products containing the composition comprising a mixture of triglycerides, column 1, lines 35-48; Cain's invention contains mixtures of saturated fatty acids having triglycerides with 16 or more carbon atoms and triglyceride fatty acids with 16 or more carbon atoms with cis-unsaturated fatty acids, column 2, lines 18-43.; The invention contains 5-80 wt. % of fat, 0-50 wt. % of water, 0-4 wt. % of salt, 20-80 wt. % of flour and 0-15 wt. % of leavening agents.; Cain describes a triglyceride ingredient B that is the same ingredient as Applicants H3 and an ingredient A that is the same as Applicants H2U, column 3, lines 16-31.; These ingredients are combined to form a fat mixture containing 10-75 wt. % H3 or S3 and 0-90 wt. % H2U or SUS.; column 4, line 62 – column 5, line 34.; Therefore, H3+H2U may incorporate up to 100 wt. % of the fat ingredient.; Also the percentages of H and U, and the ratio of H3:H2U may be any varying range within 10—75 wt. % H3 or S3 and 0-90 wt. % H2U or SUS of the fat composition.

Applicants respectfully submit that this rejection has been rendered moot by the claim amendments. For example, claim 1 has been canceled and the subject matter of claim 6 which has not been objected to for novelty has been incorporated in the currently amended independent claim 19.

35 U.S.C. § 103

Claims 6, 8 and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cain, et al., US 5,718,938, as applied to claims 1 and 9 above, in view of Bodnar, et al., US 2002/0098275. According to the Office Action, as stated above, Cain discloses a bakery fat composition and food products containing the composition comprising a mixture of triglycerides, column 1, lines 5-48.; Cain teaches that the composition is blended until it becomes a homogenous mass and then it is combined with additional ingredients to create dough, column 4, line 53 – column 5, line 55.

The Office Action admits that Cain does not teach the addition of protein to the homogenous mass of fat mixture containing a particulate size of 1-1000 nm.

Applicants respectfully submit that this rejection has been rendered moot by the claim amendments. For example, claim 1 has been canceled and the subject matter of claim 6 has been incorporated in the currently amended independent claim 19 which has not been rejected on this basis.

Claims 18-22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cain, et al., US 5,718,938, as applied to claim 1 above, in view of Jaworski, et al., US 4,126,710. According to the Office Action, as stated above, Cain discloses a bakery fat composition and food products containing the composition comprising a mixture of triglycerides, column 1, lines 5-48. ; Cain teaches that the composition is blended until it becomes a homogenous mass and then it is combined with additional ingredients, such as 0-4 wt. % salt, to create dough, column 4, line 53 – column 5, line 55.

The Office Action admits that Cain does not teach the addition of herbs, spices or vegetable powder to the homogenous mass of fat mixture in order to create a creamer or non-dairy creamer, flakes, cubes or particulate broths for soups or sauces.

Further according to the Office Action, Jaworski, et al., teaches a process for preparing a sauce mix.; Jaworski describes prior art in which triglycerides of desired characteristics are melted with any cereal flour/ starch, such as wheat flour, and other additional ingredients, such as salt, flavorings, colorants and spices, column 1, line 33 – column 2, line 30; column 3, line 65 – column 4, line 35; Example I. ; The resultant product may be dough-like, creamy, pasty or brittle and may be shaped into bars, blocks, flakes, rods and etc.; In Example III, a cream sauce is prepared by incorporating non-fat dried milk into the mixture.; The mixture of triglyceride and flour may also be used to form a roux, column 2, lines 23-30.

Note, claims 18 and 22 have been canceled. Applicants respectfully submit that the claim 19-21, as amended, are not obvious over the cited references. There is no predictability, suggestion or incentive in any or all of the cited references to use the particulates of the present invention in a creamer, whitener or non-dairy alternative in order to attain a creamer, whitener or non-dairy alternative which is low in trans-unsaturated fatty acids, exhibits good organoleptic and physical properties, and is low in lauric acid.

Claims 23-25 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cain, et al., US 5,718,938 in view of Bodnar, et al., US 2002/0098275 and Jaworski, et al., US 4,126,710. According to the Office Action, as stated above, Cain discloses a bakery fat composition comprising a mixture of triglycerides, column 1, lines 35-48. ; Cain's invention contains mixtures of saturated fatty acids having triglycerides with 16 or more carbon atoms and triglyceride fatty acids with 16 or more carbon atoms with cis-unsaturated fatty acids, column 2, lines 18-43. ; The invention contains 5-80 wt % of fat, 0-50 wt. % of water, 0-4 wt % of salt, which may be used as a spice, and 0-15 wt % of leavening agents.; Cain describes a triglyceride ingredient B that is the same ingredient as Applicants H3 and an ingredient A that is the same as Applicants H2U, column 3, lines 16-31. ; These ingredients are combined to form a fat mixture containing 10-75 wt. % H3 or S3 and 0-90 wt. % H2U or SUS. *Id.*; column 4, line 62 – column 5, line 34.; Therefore, H3+H2U may incorporate up to 100 wt. % of the fat ingredient. ; Also the percentages of H and U, and the ratio of H3:H2U may be any varying range within 10-75 wt. % H3 or S3 and 0-90 wt. % H2U or SUS of the fat composition.; etc.

The Office Action admits that Cain does not teach the particulate size of the composition or the process in which the composition is dried.

Applicants respectfully submit that this rejection has been rendered moot by cancellation of claims 23-25.

Claim 26 was rejected under 35 U.S.C. 103(a) as being unpatentable over Cain, et al., US 5,718, 938 as applied to claim 1 above, in view of Cain, et al., 5,756,143 (hereinafter Cain '143). According to the Office Action, as stated above, Cain teaches that the composition is blended until it becomes a homogenous mass and then it is combined with additional ingredients to create dough for cookies, cakes, puff pastries, etc., column 1, lines 5 – 28; column 5, line 48 – column 6, line 5.; Cain teaches that the composition is intended to become a percentage of a food product.

The Office Action admits, however, that Cain does not teach that the food product is a sauce, soup or soup concentrate.

Further according to the Office Action, Cain '143 discloses a blend of long-chain triglycerides and saturated fats, column 3, line 25 – column 5, line 20.; Cain '143's invention may be used for all types of food products, including spreads, margarine, bakery products, sauces, soups and dressings.; In Examples V and VI the fat blend is used to make sauces and dressings.; The inventive oil blend incorporates 25.0 wt. % of a range style dressing prepared in Example VI.

The Office Action concludes that, given Cain's incorporation of the inventive long-chain triglyceride blend of the Cain '143 patent in sauces, soups and dressings, it would have been obvious for a person of ordinary skill in the art at the time this invention was made to have used Cain's bakery fat composition in a sauce, soup or soup concentrate.

Claim 26 is now dependent on claim 19. Applicants respectfully submit that the claims, as amended, are not obvious over the cited references. There is no predictability, suggestion or incentive in any or all of the cited references to use the particulates of the present invention in a creamer, whitener or non-dairy alternative in order to attain a creamer, whitener or non-dairy alternative which is low in trans-unsaturated fatty acids, exhibits good organoleptic and physical properties, and is low in lauric acid.

CONCLUSION

Reconsideration of the rejection is respectfully requested in view of the above claim amendments and remarks. It is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance, Applicant's undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,

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